

STATE OF TENNESSEE

Office of the Attorney General



2004 MAR 26 PM 2:09

T.R.A. DOCKET ROOM

PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P O BOX 20207
NASHVILLE TN 37202

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

MICHAEL E. MOORE
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

March 26, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**Re: TARIFF TO ESTABLISH WELCOMING REWARDS PROMOTION -- Tariff number:
20031366, Docket 03-00625**

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division of the Office of the Attorney General's Petition to Intervene. Kindly file the attached in this docket. By copy of this letter, we are serving all parties of record. If you have any questions, please feel free to contact me at (615) 532-2590. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Joe Shirley".

Joe Shirley
Assistant Attorney General
(615)532-2590

Enclosures

cc: All Parties of Record

73924

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
TARIFF TO ESTABLISH WELCOMING)	DOCKET NO. 03-00625
REWARDS PROMOTION -)	
TARIFF NO. 20031366)	
)	

MOTION TO DISPOSE OF PRIOR MOTION TO ENTER A FINAL WRITTEN ORDER

Comes now Paul G. Summers, the Attorney General for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (hereinafter "Consumer Advocate") and hereby moves the Tennessee Regulatory Authority ("TRA") to dispose of the Consumer Advocate's prior *Motion to Enter a Final Written Order* in the above-styled matter. In support of its Motion to Dispose, the Consumer Advocate respectfully submits the following:

1. On January 15, 2004, the Consumer Advocate filed and served its *Motion to Enter a Final Written Order* in the above-styled matter and related dockets, requesting that the TRA immediately enter final orders in a series of cases where the TRA decided simultaneously to approve tariffs filed by BellSouth Telecommunications, Inc. ("BellSouth") and deny the Consumer Advocate's request for a hearing on its complaints lodged against the tariffs. *See* Docket No. 03-00512, *In Re. Promotion to Introduce BellSouth Integrated Solutions Program* - Tariff No. 2003956; Docket No. 03-00554, *In Re: Tariff to Establish the Wireless Answers Promotion* - Tariff No. 20031036; Docket No. 03-00624, *In Re: Tariff to Establish Consumer Wireless Combined Bill Reward Offer* - Tariff No. 20031379; and Docket No. 03-00625, *In Re: Tariff to Establish Welcoming Rewards Promotion* - Tariff No. 20031366.

2. No responsive pleading in opposition to the Consumer Advocate's *Motion to Enter a Final Written Order* has been filed.

3. The Consumer Advocate requested that final orders be entered in this matter and related dockets because, in its opinion, they involve important questions of administrative law concerning proper standards for convening a hearing upon a petition filed before this agency by the Consumer Advocate.

4. In particular, the Consumer Advocate is of the opinion that the TRA utilized improper standards in this regard when the agency adjudicated the merits of the Consumer Advocate's complaints without an opportunity for hearing and, accordingly, that the TRA's rulings may be erroneous and subject to reversal in the Court of Appeals, if appealed.

5. The Consumer Advocate therefore desires to review and analyze the final written orders in these cases as part of its internal procedures within the Attorney General's Office for determining whether the Consumer Advocate will seek appellate review of these decisions.

6. The TRA is an agency whose administrative process is governed by the Uniform Administrative Procedures Act ("UAPA"), and the UAPA's standards for judicial review provide the only method for appeal of a TRA decision. *See Public Serv. Comm'n v. General Tel. Co.*, 555 S.W.2d 395, 397 (Tenn. 1977).

7. In accordance with the UAPA, administrative agencies shall enter an order in contested matters within 90 days. *See Tenn. Code Ann. § 4-5-314(g)* (1998).

8. In this docket, 90 days from the date of the TRA's decision to approve BellSouth's tariff and deny the Consumer Advocate's complaint on its merits expired on March 15, 2004.

9. Moreover, the Consumer Advocate has appealed a prior TRA decision which involves issues that are closely connected to the issues presented in this matter and related cases, particularly the right of the Consumer Advocate to a contested case proceeding. *See Office of the Attorney General, Consumer Advocate and Protection Division v. Tennessee Regulatory Authority*, Case No.

M2003-01363-COA-R12-CV (TRA Docket No. 03-00060, *In Re: BellSouth's Tariff to Introduce Welcoming Reward Program* - Tariff No. 2003017).


10. Oral argument in this appeal is scheduled for May 5, 2004.

11. Accordingly, the Consumer Advocate submits that the TRA's issuance of its final orders in this matter and related dockets would be in the interest of securing a just, speedy and inexpensive determination of unsettled issues regarding the Consumer Advocate's right to a contested case hearing on matters pending before the agency.

WHEREFORE, the Consumer Advocate respectfully requests that the TRA grant the Consumer Advocate's outstanding motion to immediately enter a final written order in this docket.

RESPECTFULLY SUBMITTED,

PAUL G. SUMMERS, B.P.R. #6285
Attorney General
State of Tennessee


VANCE L. BROEMEL, B.P.R. #1142
JOE SHIRLEY, B.P.R. #022287
Assistant Attorneys General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-2590


Dated: March 26, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via first-class U.S. Mail, postage prepaid, and facsimile on March 26, 2004, upon:

Joelle Phillips, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
Facsimile: (615) 214-7406

Henry Walker, Esq.
Boult, Cummings, Conners & Berry
414 Union Street, Suite 1600
Nashville, Tennessee 37219
Facsimile: (615) 252-6363



JOE SHIRLEY
Assistant Attorney General

73956